IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 190 of 1984

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DAMJIBHAI BIJABHAI VASAVA, SINCE D/D BY HIS HEIRS & L/RS:-
Versus
RANCHHODBHAI ZINABHAI,ADULT, OCCU: AGRI. & SERVICE

Appearance:
1. Second Appeal No. 190 of 1984
UNSERVED-EXPIRED (N) for Appellant
MR KM SHETH for Appellant
MR ASHUTOSH R BHATT for Respondent No. 1,2/1
..... for Respondent No. 2,3
RULE SERVED for Respondent No. 3/1-3/2,4/1-4/5,4/8-4/9
UNSERVED-EXPIRED (R) for Respondent No. 4
RULE NOT RECD BACK for Respondent No. 4/6-4/7
MS. HANSABEN PUNANI, AGP for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 21/04/2005

ORAL JUDGEMENT

Instant appeal u/s 100 of the Code of Civil Procedure is directed against the judgement and decree dated 20.4.1983 rendered in Regular Civil Appeal No.28 of 1982 by the learned Joint District Judge, Bharuch, by which the appeal filed by the appellants came to be dismissed and thereby judgement and decree dated 22.12.1981 recorded in Regular Civil Suit No.71 of 1978 by the learned Civil Judge (SD), Bharuch decreeing the Suit filed by the respondents against the appellant for declaration and injunction, came to be affirmed.

2. The respondents have filed Regular Civil Suit No. 71 of 1978 against the appellant claiming declaration that the order dated 22.2.1977 bearing No. SHRD/Partition/2/76 passed by the Special Secretary was without jurisdiction, hence the same was null and void.

3. The Suit was contested by the appellant by filing Written Statement wherein, interalia, all the averments made in the plaint were denied. It was also claimed that the Civil Court has no jurisdiction to entertain such a dispute about tenancy. Therefore, it was prayed to dismiss the Suit.

4. The learned trial Judge who adjudicated the Suit, came to the conclusion that the order dated 22.2.1977 bearing No.SHRD/Partition/2/76 passed by the Special Secretary was without jurisdiction and hence it was null and void. It was also held that neither the Collector nor any other authority was entitled to undo what the Collector has done in implementing the decree passed by the Civil Court, Ankleshwar in Regular Civil Suit No. 17 of 1968. Resultantly appellants and the respondent No.2 to 4 were restrained from disturbing respondent No.1's possession by virtue of the order of the Special Secretary. Aggrieved by the judgement and decree passed by the learned trial Judge, the appellant has filed appeal before the learned Joint District Judge, Bharuch being Regular Civil Appeal No. 28 of 1982. The learned Joint District Judge, Bharuch, dismissed the same vide order dated 20.4.1983 which has given rise to this Second Appeal at the instance of original defendant No.2.

5. It may be noted that, initially, at the time of admission hearing of this appeal, it may be noted that this appeal was dismissed by this Court vide order dated 17.8.1984 on the ground that the appeal did not involve any substantial question of law. Aggrieved thereby, the

appellant filed Civil Appeal No. 1707 of 1995 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India allowed the Appeal and thereby set aside the order of dismissal of the appeal passed by this Court with observation that there was an important substantial question of law involved in this case which requires decision from this Court and therefore remanded the matter to this Court treating the Second Appeal as admitted and to be disposed of on merits after issuing notice to the parties. After receipt of the order from the Supreme Court, the matter was notified for admission hearing. This Court issued notice to all the concerned parties. All are served. However, they elected to remain absent accept respondent No.1 who has filed his appearance through Mr.Ashutosh Bhatt, learned advocate of this Court.

6. Today, when the matter is called out, Mr. K.M.Sheth, learned advocate of the appellant has remained present whereas Mr.Ashutosh Bhatt learned advocate for respondent No.1 has not remained present. Ms.Hansaben Punani, learned AGP appeared for respodnent No.5 - State of Gujarat. Rest of the respondents are served.

7. This Court has heard the learned advocates appearing for the parties.

8. The only substantial question of law involved in this appeal, which is required to be adjudicated by this Court is as to whether Special Secretary had jurisdiction u/s 211 of the Bombay Land Revenue Code ('the Code' for short) for entertaining the revision application filed by the appellant against the order passed by the Collector.

9. The matter is covered by the judgement of this Court in the case of Ravatsinh Ranubha v/s Sinha or his Successor and others, 2001 (2) GLR 1679. In paragraph 15 of the said judgement this court has held as under:

> "The Collector is vested with the power to partition the agricultural land because he is vested with required powers under the revenue laws and different land laws. He is, therefore, acting as the Revenue Officer and the officer under the land laws. He would therefore, be the best person to divide the agricultural lands and deal with all ancillary issues and dispose the same of fully and finally. When he has to divide the land in accordance with the revenue laws and other land laws applicable, and has also to keep in mind the Government revenue, he is the officer

who in best way can be termed the Revenue Officer. This is what is made clear by the High Court of Bombay in the case of Paygonda Survgonda Patil & Ors. v. Jingonda Survonda Patil & Ors., AIR 1968 Bom. 198 laying down that the decision of the Collector effecting the partition of the revenue paying land in execution of a decree passed by the Civil Court is subject to an appeal to the Commissioner under Sec. 203 of the Code, and is also revisable under Sec. 21 thereof. In that decision, it is made clear that the Collector is a Revenue Officer because he is appointed under the provisions of the Code, and also because the purpose of his employment and the normal work for which he is employed is to look after the revenue administration of a district. The decisions and orders passed by him, are therefore, appealable under Sec. 203 even if they are not passed in the course of revenue administration. The higher authorities of the Collector have a right to examine the correctness of the decision or the order of the Collector. Sec. 54, Civil Procedure Code contains no provision and certainly no express provision which runs counter to the appellate powers conferred under Sec. 203 of the Code. In this decision, incidentally it may also be stated that with regard to the writ jurisdiction it is made clear that High Court will not interfere with the order of the lower Court, however wrong it may be in law, but if it is necessary to interfere in the interest of justice, the Court would certainly interfere and pass appropriate order. The Collector is not subject to revisional jurisdiction of the Court, is also made clear by the High Court of Bombay in Shrinivas Hanmant's case (supra). Whenever therefore, the party has grievance against the order of the Collector effecting partition and putting the parties in possession of the portion of the land falling to their shares, there being no specific provision in the Civil Procedure Code qua Sec. 54, C.P.Code, the Appeal or the Revision permissible under the Code has to be filed before the higher authority of the Collector in hierarchial set-up under the Revenue laws or the Code, and not under the Civil Procedure Code. The decision in Ningappa Balappa's case (supra), the High Court of Bombay does not lay down that the Revision before the Collector's higher authority is not competent and

> the same has to be filed in Civil Court of the District Court. As stated in Para 12 hereinabove, the said decision lays down that the Court has limited control which is to be exercised only if the Collector contravenes the decretal order. On such decision, it cannot be inferred or assumed as has been done by the learned Advocate in making submission that the Revision will lie before the Court. The contention based on this decision that Revision cannot lie before Addl. Chief Secretary must fail."

Therefore, without going into the merits of the present case, by relying upon the ratio laid by this Court in above referred to judgement, the substantial question of law formulated by this Court is required to be answered by saying that the Special Secretary had jurisdiction u/s 211 of the Bombay Land Revenue Code for entertaining the revision application filed by the appellant against the order passed by the Collector and, accordingly, the substantial question of law is required to be answered in favour of the appellant and against respondent No.1.

10. Before the learned Civil Judge (JD), respondent No.1 filed the Suit for declaration to the effect that the order passed by the Special Secretary was without jurisdiction and, therefore, it was null and void.

11. The learned trial Judge has passed the decree as prayed for by respondent No.1 which is affirmed by the learned Joint District Judge.

12. Since the answer to the substantial question of law is in favour of the appellant, the judgement and decree passed by the learned trial Judge and affirmed by the learned Joint District Judge is deserved to be quashed and set aside by allowing this appeal.

13. For the foregoing reasons, the appeal succeeds and accordingly it is allowed with no order as to costs. Resultantly, the judgement and decree dated 22.12.1981 recorded in Regular Civil Suit No.71 of 1978 by the learned Civil Judge (SD), Bharuch decreeing the Suit filed by respondent No.1 which is affirmed by the learned Joint District Judge in Regular Civil Appeal No. 28 of 1982 vide judgement and decree dated 20.4.1983 are quashed and set aside and accordingly the Suit field by respondent No.1 is dismissed with no order as to costs.

The net result of this order is that the order dated 22.2.1977 passed by the Special Secretary bearing No. SHRD/Partition/2/76 has been restored. Collector, Bharuch is directed to comply with the said order in its true sense and spirit.

(A.M.Kapadia,J)

Jayanti*